

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 458
97TH GENERAL ASSEMBLY

0091L.03C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 135, RSMo, by adding thereto one new section relating to the Missouri special needs scholarship tax credit program known as Bryce's Law.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 135, RSMo, is amended by adding thereto one new section, to be
2 known as section 135.1220, to read as follows:

135.1220. 1. This section shall be known and may be cited as "Bryce's Law".

2 **2. As used in this section, the following terms mean:**

3 **(1) "Autism spectrum disorder", pervasive developmental disorder; Asperger**
4 **syndrome; childhood disintegrative disorder; Rett syndrome; and autism;**

5 **(2) "Contribution", a donation of cash, stock, bonds, or other marketable**
6 **securities, or real property;**

7 **(3) "Department", the department of elementary and secondary education;**

8 **(4) "Director", the commissioner of the department of elementary and secondary**
9 **education;**

10 **(5) "Educational scholarships", grants to students to cover all or part of the tuition**
11 **and fees at a qualified nonpublic school, a qualified public school, or a qualified service**
12 **provider, including transportation;**

13 **(6) "Eligible child", any child from birth to age five living in Missouri who has an**
14 **individualized family services program under the First Steps program, sections 160.900 to**
15 **160.933, and whose parent or guardian has completed the complaint procedure under the**
16 **Individuals with Disabilities Education Act, Part C, and has received an unsatisfactory**
17 **response; or any child from birth to age five who has been evaluated for special needs as**
18 **defined in this section by a person qualified to perform evaluations under the First Steps**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

19 program and has been determined to have special needs but who falls below the threshold
20 for eligibility by no less than twenty-five percent;

21 (7) "Eligible student", any elementary or secondary student who attended public
22 school in Missouri the preceding semester, or who will be attending school in Missouri for
23 the first time, who has an individualized education program based on a special needs
24 condition or who has a medical diagnosis by a qualified health professional of a special
25 needs condition;

26 (8) "Parent", includes a guardian, custodian, or other person with authority to act
27 on behalf of the child;

28 (9) "Program", the program established in this section;

29 (10) "Qualified health professional", a person licensed under chapter 334 or 337
30 who possesses credentials as described in rules promulgated jointly by the department of
31 elementary and secondary education and the department of mental health to make a
32 diagnosis of a student's special needs for this program;

33 (11) "Qualified school", either an accredited public elementary or secondary school
34 in a district that is accredited without provision outside of the district in which a student
35 resides or an accredited nonpublic elementary or secondary school in Missouri that
36 complies with all of the requirements of the program and complies with all state laws that
37 apply to nonpublic schools regarding criminal background checks for employees and
38 excludes from employment any person not permitted by state law to work in a nonpublic
39 school;

40 (12) "Qualified service provider", a person or agency authorized by the department
41 to provide services under the First Steps program, sections 160.900 to 160.933;

42 (13) "Scholarship granting organization", a charitable organization that:

43 (a) Is exempt from federal income tax;

44 (b) Complies with the requirements of this program;

45 (c) Provides education scholarships to students attending qualified schools of their
46 parents' choice or to children receiving services from qualified service providers; and

47 (d) Does not accept contributions on behalf of any eligible student or eligible child
48 from any taxpayer with any obligation to provide any support for the eligible student or
49 eligible child;

50 (14) "Special needs", an autism spectrum disorder, Down syndrome, Angelman
51 syndrome, or cerebral palsy;

52 (15) "State tax liability", in the case of a business taxpayer, any liability incurred
53 by such taxpayer under chapters 143, 147, 148, and 153, excluding sections 143.191 to
54 143.265 and related provisions, and in the case of an individual taxpayer, any liability

55 incurred by such taxpayer under chapter 143, excluding sections 143.191 to 143.265 and
56 related provisions;

57 (16) "Taxpayer", a person, firm, a partner in a firm, corporation, or a shareholder
58 in an S corporation doing business in the state of Missouri and subject to the state income
59 tax imposed by the provisions of chapter 143, or a corporation subject to the annual
60 corporation franchise tax imposed by the provisions of chapter 147, or other financial
61 institution paying taxes to the state of Missouri or any political subdivision of this state
62 under the provisions of chapter 148, or an express company which pays an annual tax on
63 its gross receipts in this state under chapter 153, or an individual subject to the state
64 income tax imposed by the provisions of chapter 143, or any charitable organization which
65 is exempt from federal income tax and whose Missouri unrelated business taxable income,
66 if any, would be subject to the state income tax imposed under chapter 143.

67 3. For all tax years beginning on or after January 1, 2013, a taxpayer shall be
68 allowed to claim a tax credit against the taxpayer's state tax liability in an amount equal
69 to fifty percent of the amount such taxpayer contributed to a scholarship granting
70 organization. No taxpayer shall be issued more than two hundred fifty thousand dollars
71 in tax credits authorized under this section per tax year. The program shall have an
72 annual limit of twenty million dollars, to be apportioned by the director between
73 scholarships for eligible children and eligible students based on the analysis conducted
74 annually under subsection 8 of this section.

75 4. The amount of the tax credit claimed shall not exceed fifty percent of a
76 taxpayer's state tax liability for the taxable year for which the credit is claimed. However,
77 any tax credit that cannot be claimed in the taxable year the contribution was made may
78 be carried over to the next four succeeding taxable years until the full credit has been
79 claimed.

80 5. The director shall determine, at least annually, which organizations in this state
81 may be classified as scholarship granting organizations. The director may require of an
82 organization seeking to be classified as a scholarship granting organization whatever
83 information which is reasonably necessary to make such a determination. The director
84 shall classify an organization as a scholarship granting organization if such organization
85 meets the definition set forth in this section.

86 6. The director shall establish a procedure by which a taxpayer can determine if
87 an organization has been classified as a scholarship granting organization. Scholarship
88 granting organizations shall be permitted to decline a contribution from a taxpayer.

89 7. Each scholarship granting organization shall provide information to the director
90 concerning the identity of each taxpayer making a contribution to the scholarship granting

91 organization who is claiming a tax credit under this section and the amount of the
92 contribution. The director shall provide the information to the director of revenue. The
93 director shall be subject to the confidentiality and penalty provisions of section 32.057
94 relating to the disclosure of tax information.

95 8. (1) The director shall annually make a determination on the number of students
96 in Missouri with an individualized education program based upon special needs as defined
97 in this section. The director shall use ten percent of this number to determine the
98 maximum number of students to receive scholarships from a scholarship granting
99 organization in that year for students with special needs who have at the time of
100 application an individualized education program, plus a number calculated by the
101 commissioner by applying the state's latest available autism, cerebral palsy, Down
102 syndrome, and Angelman syndrome incidence rates to the state's population of children
103 from age five to nineteen who are not enrolled in public schools and taking ten percent of
104 that number. The total of these two calculations shall constitute the maximum number of
105 scholarships available to students.

106 (2) The director shall also annually make a determination on the number of
107 children in Missouri whose parent or guardian has enrolled the child in First Steps,
108 received an individualized family services program based on special needs, and filed a
109 complaint through the Individuals with Disabilities Education Act, Part C, and received
110 a negative response. In addition to this number, the director shall apply the latest available
111 autism, cerebral palsy, Down syndrome, and Angelman syndrome incidence rates to the
112 latest available census information for children from birth to age five and determine ten
113 percent of that number for the maximum number of scholarships for children.

114 (3) The director shall publicly announce the number of each category of
115 scholarship opportunities available each year. Once a scholarship granting organization
116 has decided to provide a student or child with a scholarship, it shall promptly notify the
117 director. The director shall keep a running tally of the number of scholarships granted in
118 the order in which they were reported. Once the tally reaches the annual limit of
119 scholarships for eligible students or children, the director shall notify all of the
120 participating scholarship granting organizations that they shall not issue any more
121 scholarships and any more receipts for contributions. If the scholarship granting
122 organizations have not expended all of their available scholarship funds in that year at the
123 time when the limit is reached, the available scholarship funds may be carried over into the
124 next year. These unexpended funds shall not be counted as part of the requirement in
125 subdivision (3) of subsection 10 of this section for that year. Any receipt for a scholarship
126 contribution issued by a scholarship granting organization before the director has publicly

announced the student or child limit has been reached shall be valid for a taxpayer claiming a credit.

9. Notwithstanding any other law to the contrary, any tax credits granted under this section may be assigned, transferred, sold, or otherwise conveyed without consent or approval. Such taxpayer, hereinafter the assignor for purposes of this section, may sell, assign, exchange, or otherwise transfer earned tax credits:

(1) For no less than seventy-five percent of the par value of such credits; and

(2) In an amount not to exceed one hundred percent of annual earned credits.

10. Each scholarship granting organization participating in the program shall:

(1) Notify the department of its intent to provide educational scholarships to students attending qualified schools or children receiving services from qualified service providers;

(2) Provide a department-approved receipt to taxpayers for contributions made to the organization;

(3) Ensure that at least ninety percent of its revenue from donations is spent on educational scholarships, and that all revenue from interest or investments is spent on educational scholarships;

(4) Ensure that the scholarships provided do not exceed an average of twenty thousand dollars per eligible child or fifty thousand dollars per eligible student;

(5) Inform the parent or guardian of the student or child applying for a scholarship that accepting the scholarship may affect the student's or child's right to services if the student or child returns to the public school in his or her residence district;

(6) Distribute periodic scholarship payments as checks made out to a student's or child's parent and mailed to the qualified school where the student is enrolled or qualified service provider used by the child. The parent or guardian shall endorse the check before it can be deposited;

(7) Cooperate with the department to conduct criminal background checks on all of its employees and board members and exclude from employment or governance any individual who might reasonably pose a risk to the appropriate use of contributed funds;

(8) Ensure that scholarships are portable during the school year and can be used at any qualified school that accepts the eligible student or at a different qualified service provider for an eligible child according to a parent's wishes. If a student moves to a new qualified school during a school year or to a different qualified service provider for an eligible child, the scholarship amount may be prorated;

(9) Demonstrate its financial accountability by:

(a) Submitting a financial information report for the organization that complies with uniform financial accounting standards established by the department and conducted by a certified public accountant; and

(b) Having the auditor certify that the report is free of material misstatements;

(10) Demonstrate its financial viability, if the organization is to receive donations of fifty thousand dollars or more during the school year, by filing with the department before the start of the school year:

(a) A surety bond payable to the state in an amount equal to the aggregate amount of contributions expected to be received during the school year; or

(b) Financial information that demonstrates the financial viability of the scholarship granting organization.

11. Each scholarship granting organization shall ensure that each participating school or service provider that accepts its scholarship students or children shall:

(1) Comply with all health and safety laws or codes that apply to nonpublic schools or service providers;

(2) Hold a valid occupancy permit if required by its municipality;

(3) Certify that it will comply with 42 U.S.C. Section 1981, as amended;

(4) Provide academic accountability to parents of the students or children in the program by regularly reporting to the parent on the student's or child's progress;

(5) Certify that in providing any educational services or behavior strategies to a scholarship recipient with a diagnosis of or an individualized education program based upon autism spectrum disorder it will:

(a) Adhere to the best practices recommendations of the Missouri Autism Guidelines Initiative or document why it is varying from the guidelines;

(b) Not use any evidence-based interventions that have been found ineffective by the commission on Medicare as described in the Missouri Autism Guidelines Initiative Guide to Evidence-based Interventions; and

(c) Provide documentation in the student's or child's record of the rationale for the use of any intervention that is categorized as unestablished, insufficient evidence, or level 3 by the Missouri Autism Guidelines Initiative Guide to Evidence-based Interventions; and

(6) Certify that in providing any educational services or behavior strategies to a scholarship recipient with a diagnosis of, or an individualized family services program based upon Down syndrome, Angelman syndrome, or cerebral palsy, it will use student, teacher, teaching, and school influences that rank in the zone of desired effects in the meta-analysis of John Hattie, or equivalent analyses as determined by the department, or

197 document why it is using a method that has not been determined by analysis to rank in the
198 zone of desired effects.

199 **12. Scholarship granting organizations shall not provide educational scholarships**
200 **for students to attend any school or children to receive services from any qualified service**
201 **provider with paid staff or board members who are relatives within the first degree of**
202 **consanguinity or affinity.**

203 **13. A scholarship granting organization shall publicly report to the department, by**
204 **June first of each year, the following information prepared by a certified public accountant**
205 **regarding its grants in the previous calendar year:**

206 **(1) The name and address of the scholarship granting organization;**

207 **(2) The total number and total dollar amount of contributions received during the**
208 **previous calendar year; and**

209 **(3) The total number and total dollar amount of educational scholarships awarded**
210 **during the previous calendar year, including the category of each scholarship, and the total**
211 **number and total dollar amount of educational scholarships awarded during the previous**
212 **year to students eligible for free and reduced lunch.**

213 **14. The department shall adopt rules and regulations consistent with this section**
214 **as necessary to implement the program.**

215 **15. The department shall provide a standardized format for a receipt to be issued**
216 **by a scholarship granting organization to a taxpayer to indicate the value of a contribution**
217 **received. The department shall require a taxpayer to provide a copy of this receipt when**
218 **claiming the Missouri special needs scholarship tax credit.**

219 **16. The department shall provide a standardized format for scholarship granting**
220 **organizations to report the information in this section.**

221 **17. The department may conduct either a financial review or audit of a scholarship**
222 **granting organization.**

223 **18. If the department believes that a scholarship granting organization has**
224 **intentionally and substantially failed to comply with the requirements of this section, the**
225 **department may hold a hearing before the director or the director's designee to bar a**
226 **scholarship granting organization from participating in the program. The director or the**
227 **director's designee shall issue a decision within thirty days. A scholarship granting**
228 **organization may appeal the director's decision to the administrative hearing commission**
229 **for a hearing in accordance with the provisions of chapter 621.**

230 **19. If the scholarship granting organization is barred from participating in the**
231 **program, the department shall notify affected scholarship students or children and their**
232 **parents of this decision within fifteen days.**

233 **20. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
234 **created under the authority delegated in this section shall become effective only if it**
235 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
236 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**
237 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
238 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
239 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2013,**
240 **shall be invalid and void.**

241 **21. The department shall conduct a study of the program with funds other than**
242 **state funds. The department may contract with one or more qualified researchers who**
243 **have previous experience evaluating similar programs. The department may accept grants**
244 **to assist in funding this study.**

245 **22. The study shall assess:**

246 **(1) The level of participating students' and childrens' satisfaction with the program**
247 **in a manner suitable to the student or child;**

248 **(2) The level of parental satisfaction with the program;**

249 **(3) The percentage of participating students who were bullied or harassed because**
250 **of their special needs status at their resident school district compared to the percentage so**
251 **bullied or harassed at their qualified school;**

252 **(4) The percentage of participating students who exhibited behavioral problems at**
253 **their resident school district compared to the percentage exhibiting behavioral problems**
254 **at their qualified school;**

255 **(5) The class size experienced by participating students at their resident school**
256 **district and at their qualified school; and**

257 **(6) The fiscal impact to the state and resident school districts of the program.**

258 **23. The study shall be completed using appropriate analytical and behavioral**
259 **sciences methodologies to ensure public confidence in the study.**

260 **24. The department shall provide the general assembly with a final copy of the**
261 **evaluation of the program by December 31, 2016.**

262 **25. The public and nonpublic participating schools and service providers from**
263 **which students transfer to participate in the program shall cooperate with the research**
264 **effort by providing student or child assessment instrument scores and any other data**
265 **necessary to complete this study.**

266 **26. The general assembly may require periodic updates on the status of the study**
267 **from the department. The individuals completing the study shall make their data and**

268 methodology available for public review while complying with the requirements of the
269 Family Educational Rights and Privacy Act, as amended.

270 27. Under section 23.253 of the Missouri sunset act:

271 (1) The provisions of the new program authorized under this section shall sunset
272 automatically on December 31, 2019, unless reauthorized by an act of the general
273 assembly; and

274 (2) If such program is reauthorized, the program authorized under this section
275 shall sunset automatically on December 31, 2031; and

276 (3) This section shall terminate on December thirty-first of the calendar year
277 immediately following the calendar year in which the program authorized under this
278 section is sunset. The termination of the program as described in this subsection shall not
279 be construed to preclude any taxpayer who claims any benefit under any program that is
280 sunset under this subsection from claiming such benefit for all allowable activities related
281 to such claim that were completed before the program was sunset, or to eliminate any
282 responsibility of the administering agency to verify the continued eligibility of projects
283 receiving tax credits and to enforce other requirements of law that applied before the
284 program was sunset.

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